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MEMO ENDORSED

October 6, 2021

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 10/7/21

VIA EMAIL

The Honorable Valerie E. Caproni
United States District Judge
United States District Court for the Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square

Re: United States v. Michael Del Villar, 20-cr-295 (VEC)

Dear Judge Caproni:

On behalf of the defendant Michael Del Villar, I write respectfully to request permission to file under seal and redact certain Exhibits to the Declaration of Julie-Irene Nkodo in Support of Michael Del Villar's Motion for Reconsideration ("Nkodo Declaration"), and the Memorandum of Law in Support of Michael Del Villar's Motion for Reconsideration, which contain "sensitive information" as defined in the Southern District of New York Electronic Case and Filing Rules & Instructions ("SDNY Filing Rules"), Section 21 (Privacy and Public Access to ECF Cases) and as identified in Federal Rule of Criminal Procedure 49.1(a)(5) (Privacy Protection for Filings Made with the Court). The government and counsel for Enrique Rosado consent to this request.

At common law and under the First Amendment, there is a general presumption in favor of public access to judicial documents. *See Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 141 (2d Cir. 2016); *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006). The Second Circuit has articulated a three-step process to determine whether documents should be placed under seal. First, a court must decide whether the documents constitute "judicial documents," which are documents "relevant to the performance of the judicial function and useful in the judicial process." *Lugosch*, 435 F.3d at 119 (internal quotations and citation omitted). Second, if the Court determines that the documents are judicial documents, the Court must then assess the weight of the presumption of access. *See Bernstein*, 814 F.3d at 141–42. And finally, the Court must "balance competing considerations"

against the presumption of access, such as “the danger of impairing . . . judicial efficiency” and “the privacy interests of those resisting disclosure.” *Lugosch*, 435 F.3d at 120 (internal citation omitted).

The justification and location of the proposed sealing and redactions are outlined below.

1. The cellphone number of a defendant

The SDNY Filing Rules state that caution should be exercised when filing documents that contain “personal identifying numbers.” SDNY Filing Rules, Section 21.4. A cellphone number is clearly associated with an individual and can be used to identify and contact that person. The cellphone number of a defendant (and of other private individuals) are included at the following document and we respectfully request its sealing:

- Nkodo Declaration, Exhibit 2, Pen Register Information Spreadsheet, USAO_000599.

2. The identifying information of the owner of the apartment

The SDNY Filing Rules state that “[i]n order to protect people’s privacy . . . , parties should be cautious when filing sensitive information.” SDNY Filing Rules, Section 21.2. The owner of the apartment in question’s name and address is included in the following documents and we respectfully request their redaction on account of the nature of the allegations of events that occurred at the owner’s apartment building and their status as a non-party:

- Nkodo Declaration, Exhibit 10, Interview with Building Owner, February 19, 2021, 3507-01.
- Memorandum of Law in Support of Michael Del Villar’s Motion for Reconsideration at 15-16.

Pursuant to Rules 3 (A) (ii) and (iii) of Your Honor’s Individual Practices in Criminal Cases, we will file the sealed and redacted versions of the documents on ECF and provide Chambers with a copy of the documents with redactions identified.

Thank you for the Court’s consideration of this request. We are available to provide any additional information the Court requires.

Respectfully submitted,

/s/ Julie-Irene Nkodo

Julie-Irene Nkodo

Counsel for Michael Del Villar

cc: Brett Kalikow, Assistant United States Attorney (via ECF)
Kaylan Lasky, Assistant United States Attorney (via ECF)
Toni Messina, Esq. (via ECF)

Application GRANTED.

SO ORDERED.

 10/7/21

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE